

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD A. MAIETTA and  
CLAIRE MAIETTA, his wife,

Plaintiffs,

v.

Civil Action No. \_\_\_\_\_

MICHELE L. MALSKI; CP RAIL SYSTEMS  
CORP.; CANADIAN PACIFIC RAILWAY,  
Individually and d/b/a CP RAIL SYSTEMS  
CORP.; DELAWARE & HUDSON RAILWAY  
COMPANY, INC. d/b/a Canadian Pacific  
Railway a/k/a CP Rail System; D&H  
RAILROAD d/b/a DELAWARE & HUDSON  
RAILWAY COMPANY, INC.; and  
DELAWARE & HUDSON RAILWAY  
COMPANY, INC.,

Defendants.

**NOTICE OF REMOVAL**

AND NOW, come the Defendants, Michele L. Malski, CP Rail Systems Corp., Canadian Pacific Railway, individually and d/b/a CP Rail Systems Corp., Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway a/k/a CP Rail System, D&H Railroad d/b/a Delaware & Hudson Railway Company, Inc., and Delaware & Hudson Railway Company, Inc., by and through their undersigned counsel, and remove the above-captioned lawsuit pursuant to 28 U.S.C., § 1441, *et seq.* from the Court of Common Pleas of Susquehanna County, Pennsylvania, where it has been assigned Docket No. 2017-332 CP, and in support thereof, avers as follows:

1. Plaintiffs initiated this lawsuit on March 16, 2017 by Writ of Summons in the Court of Common Pleas of Susquehanna County, Pennsylvania at Docket No. 2017-332 CP.

2. Subsequently, Plaintiffs filed a Complaint on July 5, 2017 alleging, *inter alia*, that the Defendants were negligent in the happening of a motor vehicle accident on March 18, 2015, which caused Plaintiffs to sustain injuries and/or damages.

3. True and correct copies of all process and other pleadings filed in the case to date are attached hereto collectively as Exhibit "A".

4. This Notice of Removal is being filed within thirty (30) days of Defendants' receipt of the Complaint, which is the "initial pleading" setting forth the claim for relief upon which this action is based. 28 U.S.C., § 1446(b).

5. According to the Complaint, Plaintiffs Richard A. Maietta and Claire Maietta are adult citizens and residents of the State of New Jersey. (*See*, Complaint, ¶ 1).

6. At the time this action was commenced and continuing to the present, Defendant Michele L. Malski was and is a resident of Alexandria, Fairfax County, Virginia.

7. At the time this action was commenced and continuing to the present, Defendant Delaware and Hudson Railway Company, Inc. (hereinafter "D&H") was and is a Delaware corporation with a principal place of business located at 55 Glenham Road, Saratoga Springs, New York 12866.

8. Prior to commencement of this action, D&H's principal place of business was located at 200 Clifton Corporate Parkway, Clifton Park, New York 12065.

9. All other defendants identified in the Plaintiffs' Complaint are names which have been used to refer to D&H, but they are not separate and distinct entities or corporations. Notwithstanding, all are identified in Complaint as being Delaware corporations with a principal place of business located in Clifton Park, New York. (*See*, Complaint, ¶¶ 3-6).

10. The current action pending in the Court of Common Pleas of Susquehanna County, Pennsylvania is within the jurisdiction of the United States District Court for the Middle District of Pennsylvania.

11. Although the Plaintiffs' Complaint does not demand a specific sum, it was reported to Defendants' insurance carrier on July 7, 2017 that Mr. Maietta's worker's compensation lien associated with this accident is \$77,237.50.

12. Accordingly, the United States District Court for the Middle District of Pennsylvania has original jurisdiction of this action pursuant to 28 U.S.C., § 1332 inasmuch as the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

13. This action is removable from the Court of Common Pleas of Susquehanna County, Pennsylvania, pursuant to the provisions of 28 U.S.C., § 1441, *et seq.* Defendants have filed the within Notice of Removal within thirty (30) days of their receipt of the Complaint on July 5, 2017, and it has been less than one year after commencement of this action. 28 U.S.C., § 1446.

14. Concurrent with the filing of this Notice of Removal, Defendants have filed a Notice of Filing of Notice of Removal with the Prothonotary of the Court of Common Pleas of Susquehanna County, Pennsylvania, advising it that the Defendants have removed this action to United States District Court for the Middle District of Pennsylvania.

15. In filing this Notice of Removal, Defendants do not waive any affirmative defenses they may assert in this action.

WHEREFORE, Defendants pray that this case be removed from the Court of Common Pleas of Susquehanna County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/ Scott D. Clements

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Counsel for Defendants,  
Michele L. Malski and Delaware and  
Hudson Railway Company, Inc. d/b/a  
Canadian Pacific, incorrectly identified  
as CP Rail Systems Corp., Canadian  
Pacific Railway, Individually and d/b/a  
CP Rail Systems Corp., Delaware &  
Hudson Railway Company, Inc. d/b/a  
Canadian Pacific Railway a/k/a CP Rail  
System, and D&H Railroad d/b/a  
Delaware & Hudson Railway Company,  
Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 24, 2017, I filed the foregoing **Notice of Removal** with the Clerk using the CM/ECF System and have served a copy thereof by Electronic Mail and first-class U.S. mail, postage pre-paid, to the following counsel of record:

Malcolm L. MacGregor, Esquire  
McDonald & MacGregor, LLC  
538 Spruce Street, Suite 320  
Scranton, PA 18503

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/ Scott D. Clements  
J. Lawson Johnston, Esquire  
Scott D. Clements, Esquire

Counsel for Defendants